

SEC GRANTS BLUE SKY EXEMPTION FOR NASDAQ CAPITAL MARKET COMPANIES

By James G. Smith



Since 1996, the National Securities Markets Improvement Act (“NSMIA”) has provided large companies an exemption from review of securities offerings from state securities, also known as blue sky, regulators. Prior to NSMIA, any company engaging in a public offering would have to comply

with the blue sky laws in those states where the company is seeking to sell its securities. After NSMIA, a company listed on the New York Stock Exchange, the American Stock Exchange, or NASDAQ National Market (now called the NASDAQ Global Market) need no longer qualify or register their public offerings with state blue sky regulators.

On April 18, 2007 the Securities and Exchange Commission expanded the exchanges to include companies listed on the NASDAQ Capital Market (formerly known as the NASDAQ SmallCap Market). NASDAQ essentially consists of two tiers – NASDAQ Global Market (including the NASDAQ Global Select Market) and NASDAQ Capital Market.

The NASDAQ Global Market, the tier most people are familiar with, is for large capitalization companies, such as Microsoft. The NASDAQ Capital Market, which has initial

and continued listing standards less burdensome than the NASDAQ Global Market, has traditionally been available for smaller companies.

This action by the SEC provides a welcome relief from registering public offerings for smaller public companies currently listed on the NASDAQ Capital Market and those seeking access to public markets through listing on NASDAQ.

About James G. Smith, Partner

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